ORIGINAL

Erik F. Stidham (ISB No. 5483)
efstidham@stoel.com
G. Rey Reinhardt (ISB No. 6209)
grreinhardt@stoel.com
STOEL RIVES LLP
101 S. Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Fax: (208) 389-9040

Scott J. Kaplan, Pro Hac Vice
sjkaplan@stoel.com
STOEL RIVES LLP
900 SW Fifth Avenue, Suite 2600
Portland, OR 97204-1268
Telephone: (503) 224-3380
Fax: (503) 220-2480

Attorneys for Defendant InterDent Service Corporation

UNITED STATES DISTRICT COURT

DISTRICT OF IDAHO

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation,

Plaintiff,

v.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Defendant.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Case No. CV-03-450-E-LMB

ISC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF'S CLAIMS

Counterclaimant,

v.

POCATELLO DENTAL Group, P.C., an Idaho professional corporation; DWIGHT G. ROMRIELL, individually; LARRY MISNER, JR., individually; PORTER SUTTON, individually; ERNEST SUTTON, individually; GREGORY ROMRIELL, individually; ERROL ORMOND, individually; and ARNOLD GOODLIFFE, individually,

Counterdefendants.

LARRY R. MISNER, JR., individually,

Counterclaimant,

v.

INTERDENT SERVICE CORPORATION, a Washington corporation,

Counterdefendant.

LARRY R. MISNER, JR., individually,

Crossclaimant,

v.

POCATELLO DENTAL GROUP, P.C., an Idaho professional corporation,

Crossdefendant.

I. Introduction

This is the third court in which this dispute between plaintiffs Pocatello Dental Group ("the Group") and defendant InterDent Service Corporation ("ISC") has been pending. Notwithstanding the Group's forum shopping, however, once was enough. The claims brought by the Group, other than as they relate to the Group's unilateral efforts to rehire third-party defendant Dwight Romriell, were resolved in the U. S. Bankruptcy Court. The claims related to the Group's hiring Romriell are now moot because he has been employed elsewhere since at least fall 2003 and without dispute since January 1, 2004. The only claims that are in fact properly before the Court are ISC's claim for damages against the Group and its shareholders.

The claims that are the subject of this motion (other than those related to Romriell) were first raised by the Group in ISC's bankruptcy both in an affirmative claim asserted by the Group and in the Group's objecting to the confirmation of the contract between the parties, the October 11, 1996 Management Agreement (the "Management Agreement", a copy of which is attached to the Affidavit of Ivar Chhina In Opposition to Plaintiff's Motion for a Preliminary Injunction ¶ 3[1]). The Group ultimately stipulated that there was no prepetition default, withdrew its claims and stipulated that ISC could assume the Management Agreement without the necessity of any cure. The Bankruptcy Court approved the stipulation and ISC's assumption of the Management Agreement. Nonetheless, within days of the Bankruptcy Court's orders to which the Group stipulated, the Group brought the same claims secretly in state court in order to obtain an ex parte TRO. ISC, upon being informed of the state court action, removed to this Court.

[1] The Chhina Affidavit along with corresponding exhibits is attached as Exhibit 1 to the Affidavit of Scott Kaplan ¶ 2.

To simplify the analysis of the claims that are the subject of this motion, the Group's claims in this action can be broken down as follows:

1. Declaratory Judgment

   A. That paragraph 5.2(b) of the Management Agreement, related to the hiring of dentists, is invalid and unenforceable (Complaint ¶ 21),

   B. That the Group was authorized to unilaterally enter into a August 26, 2003 Employment Agreement with Romriell (the "2003 Employment Agreement", a copy of which is attached as Exhibit C to the Affidavit of Dwight G. Romriell ¶ 11[2]) (*Id.*), and

   C. That ISC's "failure to recognize the 2003 Employment Agreement" constitutes a material breach of the Management Agreement (*Id.*).

2. Breach of Contract

   A. For "failure to recognize the 2003 Employment Agreement" and ISC's "threats to exclude Dr. Romriell from the premises" after the expiration of his employment contract (Complaint ¶ 23),

   B. For terminating Dr. Romriell's staff and threatening to exclude Dr. Romriell from the premises" (Complaint ¶ 24),

   C. For terminating Dr. Romriell's staff without the consent of the Group (Complaint ¶ 25), and

   D. For failing "to schedule and/or canceling appointments between Dr. Romriell and his patients" (Complaint ¶ 26).

3. Injunctive Relief

   A. Enjoining ISC from "physically excluding Dr. [] Romriell from the premises of the [Group] at the Pineridge Mall in Chubbuck, Idaho" (Complaint ¶ 29),

   B. Enjoining ISC from "refusing to pay Dr. [] Romriell compensation and benefits according to the 2003 Employment Agreement" (*Id.*),

   C. Enjoining ISC from "[t]erminating, refusing to pay compensation and benefits to, or reducing the hours of Dr. [] Romriell's staff" (*Id.*),

[2] The Romriell Affidavit along with corresponding exhibits is attached as Exhibit 2 to the Kaplan Aff ¶ 3.

D. Enjoining ISC from "[r]efusing to schedule Dr. [] Romriell's patients, including existing and new patients, for appointments" (*Id.*),

E. Enjoining ISC from "[c]ancelling appointments scheduled for Dr. [] Romriell without his consent" (*Id.*),

F. Enjoining ISC from "[c]ommitting any act which interferes with the relationship between Dr. []Romriell and his patients or in any way inhibits his ability to treat his patients in an efficient and effective manner" (*Id.*).

4. Additional Breaches of Contract

A. Failing "to include in dentists' compensation the share of interest charged in patient accounts" (Complaint ¶ 34),

B. Failing "to deposit accounts receivable in an account approved by the Group" (*Id.*),

C. Failing "to pay the claims and obligations of the Group" (*Id.*),

D. Interfering "with the Group's practice of dentistry" (*Id.*),

E. Failing "to hire and train all non-dentists personnel needed to operate the practice" (*Id.*),

F. "[C]harging paid time off *** to dentists as direct wages" (*Id.*),

G. Failing "to maintain practice as the preeminent group practice in the Pocatello and surrounding area" (*Id.*),

H. Failing "to provide and maintain equipment and supplies necessary for the efficient and effective operation of the practice" (*Id.*),

I. Failing "to provide an experienced manager" (*Id.*),

J. Failing "to provide financial statement and accounting records" (*Id.*),

K. Denying "access to patients' records" (*Id.*), and

L. Violating "laws and public policy related to the practice of dentistry" (*Id.*).

ISC moves for summary judgment as to the following claims on the basis that such claims are moot and have been so since no later than January 1, 2004: 1A-C, 2A-D, and 3A-F.

It also moves for summary judgment against claims 4A-L to the extent that such claims are precluded by the bankruptcy proceedings (see discussion below). In the alternative, ISC moves for an order precluding the Group from recovering any damages on claims 4A-L except to the extent that such causes of action and any resulting damages arose after October 3, 2003, the effective date of ISC's Chapter 11 Bankruptcy Plan ("ISC's Bankruptcy Plan", a copy of which is attached as Exhibit 3 to the Kaplan Aff. ¶ 4).

II. Statement of Undisputed Facts

A. The Management Agreement

In October 1996, ISC's predecessor, GMS Dental Group Management, Inc., acquired the nonprofessional assets of the dental practice presently conducted by the Group in exchange for $2.8 million in cash and stock to the Group shareholders.[3] (Chhina Aff. ¶2.) The parties entered into the Management Agreement under which ISC provides management services, facilities and equipment, employs the nonprofessional staff, and retains the net amount after these costs. The Group's shareholder dentists are compensated at approximately 38 percent of their net collections, regardless of costs. (*Id.* ¶ 5.)

Since the sale, the Group has experienced what its own consultant described as "sellers' remorse." (*See* October 2003 Report, attached as Exhibit B to the Chhina Aff. ¶ 7.) In October 2003, Larry R. Wintersteen, a consultant retained solely by the Group to evaluate the dental practice, urged the Group dentists to "respect the financial policy and procedure that has been established by the management company." (*Id.* at 8.) The consultant provided the following analogy: "It is sort of like when you have sold a car to a person and yet you want to keep the car

[3] Counterdefendants Larry Misner, Jr. and Romriell were each paid $400,000. (Chhina Aff. ¶ 2.)

to drive. The person you sold the car will usually not drive the way you do . . . but, they have paid for the car. Give it to them." (*Id.* at 12.)

Unfortunately, the Group has disregarded this advice. As one example, in the first quarter of 2003 alone, the Group wrote off over $76,000 in dentistry as "professional" or "courtesy" discounts. (Chhina Aff. ¶ 8.) ISC informed the Group that ISC had responsibility for billing and that free services to friends and relatives would need approval. (*Id.*) In response, the Group threatened to unilaterally terminate the Management Agreement and insisted that its counsel attend Joint Operations Committee meetings. In September 2003, shortly before they filed the current lawsuit, the Group's expenses for supplies and other items increased so substantially as to cause the dental practice to be unprofitable on an accrual basis (without affecting the compensation of Group dentists). (*Id.* ¶ 22.)

B. The Bankruptcy Action

On May 9, 2003, ISC filed for bankruptcy reorganization under Chapter 11, *In re InterDent Services Corporation*, U.S. Bankruptcy Court for the Central District of California Case No. 03-13494, and obtained an order authorizing it to "operate its business and to perform its obligations, in the ordinary course of business pursuant to the Management Agreements with the Professional Corporations ***." (Chhina Aff. ¶ 9, Ex. D.) In the bankruptcy, the Group made many of the same claims as it does in the current litigation, both in an adversary proceeding and in objecting to ISC's assumption of the Management Agreement. (*See* Objection of Creditor Pocatello Dental Group, P.C. to Assumption of Executory Contract as Provided in Second Amended Joint Chapter 11 Plan of Reorganization (the "Objection"), attached as Exhibit 4 to Kaplan Aff. ¶ 5.)

On October 3, 2003, only six days before it filed the present action, the Group, in a stipulation, withdrew all of its claims and objections to ISC's assumption of the Management Agreement (the "Stipulation", attached as Ex. G to the Chhina Aff. ¶ 11). It stipulated that "[t]he Contract [*i.e.*, the Management Agreement] is assumed by debtor pursuant to the Plan [of reorganization], and no prepetition cure payments are due upon assumption." (*Id.*) The Bankruptcy Court approved ISC's Bankruptcy Plan on October 3, 2003 (Kaplan Aff. ¶ 4, Ex. 3) and the Stipulation on October 8, 2003. (Chhina Aff. ¶ 11, Ex. G.) Nonetheless, within a week of agreeing to dismiss its claims, the Group refiled them in state court (the current action). ISC removed the action to federal court.

C. The Group's Scheme with Romriell

Romriell provided written notice of his resignation from the Group on April 11, 2003. (*Id.* ¶ 12.) Consistent with his noncompete agreement, he had six months (until October 11, 2003) to establish a practice outside the region. Instead, Romriell secretly set up a new practice in Pocatello that he named "The TMJ Center" and began to accept patients. (*Id.* ¶ 12, Ex. I.) In August 2003, without ISC's knowledge, the Group entered into the 2003 Employment Agreement with Romriell that was purported to take effect on October 12, 2003.

In early October 2003, Misner, at the time president of the Group, told ISC's president, Ivar Chhina, that Romriell needed additional time to set up a new practice and it was necessary for him to remain with the Group until the end of the year. The Group obtained a TRO from the state court requiring Romriell to remain in the Group's employ and requiring ISC to employ five of his assistants at a cost of over $1,900 per week.

From October 12, 2003 through the end of the year, Romriell split his time between his new office on 1777 E Clark in Pocatello and the Group's offices at Pineridge Mall in Pocatello

(though by far the majority of his time was spent at his new office). As of January 1, 2004, Romriell is no longer spending time at the Group's office and is no longer an employee of the Group (although he allegedly remains a shareholder). (*See* Affidavit of Bruce Call In Support of Defendant/Third-Party Plaintiff's Motion for Temporary Restraining Order ¶ 2.[4])

III. Argument

A. The Court Should Dismiss the Group's Claims Relating to Romriell (1B, 1C, 2A-D, and 3A-F) As Moot

Since Romriell is no longer an employee of the Group, the dispute about whether the Group had the authority to unilaterally hire him is now moot. According to the United States Supreme Court, mootness is "the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *United States Parole Comm'n v. Geraghty*, 445 U.S. 388, 397, 100 S. Ct. 1202, 63 L. Ed. 2d 479 (1980). A matter becomes "moot" when "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496, 89 S. Ct. 1944, 23 L.Ed.2d 491 (1969); *see also Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240-41, 57 S. Ct. 461, 81 L. Ed. 617 (1937) (controversy "must be a real and substantial controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion"). A federal court may not hear an action if, after its initiation, the matter becomes moot in that it loses "its character as a present, live controversy of the kind that must exist if [the court is] to avoid advisory opinions on abstract propositions of law." *Hall v. Beals*, 396 U.S. 45, 48, 90 S. Ct. 200, 24 L. Ed. 2d 214 (1969) (per curiam). Because this requirement derives from Article III of the United States Constitution, it

[4] The Call Affidavit is attached as Exhibit 5 to the Kaplan Aff. ¶ 6.

may not be ignored when convenient. *Liner v. Jafco, Inc.*, 375 U.S. 301, 306 n. 3, 84 S. Ct. 391, 11 L. Ed 2d 347 (1964) (requirement derives from Constitution); *United States v. Alaska S. S. Co.*, 253 U.S. 113, 116, 40 S. Ct. 448, 64 L. Ed. 808 (1920) (moot question cannot be decided, however "convenient").

At the initiation of this litigation, there was a dispute between ISC and the Group relating to Romriell. Claims 1B-C, 2A-D, and 3A-F are all directly relate to this dispute. As of January 1, 2004 at the latest, when Romriell ceased any practice at the Group's offices, that dispute no longer exists. The Group admitted in its own pleadings that Romriell's "last day was December 31, 2003." (*See* Plaintiff's Objection to Defendant's Motion and Application For a Temporary Restraining Order at 5.) Romriell no longer has any connection with ISC and is no longer employed by the Group. Accordingly, the Group's claim for declaratory judgments relating to whether it was authorized to enter into the 2003 Employment Agreement (claim 1B) and whether ISC breached the Management Agreement by failing to recognize the 2003 Employment Agreement (claim 1C) are moot in that there is no longer a live controversy. *Native Village of Noatak v. Blatchford*, 38 F.3d 1505, 1509 (9th Cir. 1994) (court may not issue declaratory judgment to determine moot questions)

Similarly, the Group's requests for injunctive relief (claims 3A-F) are now moot because there is no possibility of continuing injury, *i.e.* ISC will no longer be paying Romriell or his staff compensation or benefits, scheduling his patients or appointments, and the like. *Comm. in Solidarity with the People of El Salvador (CISPES) v. Sessions*, 929 F.2d 742, 744 (D.C. Cir. 1991) (" In injunction suits, plaintiffs usually must establish that the allegedly illegal actions of the past are causing or threatening to cause them present injuries. *** If the possibility of continuing injury disappears while the lawsuit is pending, the complaint ordinarily should be

dismissed as moot.") Finally, the Court should also dismiss the Group's first breach of contract claim (claims 2A-2D) because there is no longer a live controversy. 28 U.S.C.A. § 2201 (a) (court may grant declaratory judgment only where there is an "actual controversy"); *Powell*, 395 U.S. at 496.

B. To avoid Sweeping and Unnecessary Rulings of State Law, The Court Should Dismiss Claim 1A As Moot

Claim 1A seeks a declaratory judgment that paragraph 5.2(b) of the Management Agreement is invalid and unenforceable as an alleged "corporate practice of dentistry." Paragraph 5.2(b) states:

> "Provider Subcontracts and Employment Agreements.
>
> Group shall not negotiate or execute any Provider Subcontract, Employment Agreement, or any amendment thereto, or terminate any Provider Subcontract or Employment Agreement without the approval of the Joint Operations Committee. Subject to Manager's responsibilities under Section 2.6(b)m Group shall be responsible for the payment, in accordance with the Annual Budget, of all Employee and Subcontract Providers."

The Declaratory Judgment Act of 1934 provides in relevant part that "[I]n a case of actual controversy within its jurisdiction *** any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration". 28 U.S.C.A. § 2201 (a). The "actual controversy" requirement arises out of Article III of the U. S. Constitution and precludes a federal court from determining moot questions. *Aetna Life Ins. Co.*, 300 U.S. at 239-40.

Since the Romriell issue has been resolved, there is no longer a controversy between the parties as to the hiring of any dentist. Nonetheless, the Group by this action seeks to make sweeping changes to the standard model in the United States of professional management of medical and dental offices by claiming it is somehow improper under Idaho state law for a

committee consisting of ISC and Group representatives to have a veto power over whether it makes business sense for the Group to employ another dentist. In essence, the Group would have the Court issue a ruling that provider groups are free to hire without any consideration of the economics of their actions. The Group is wrong on the merits and ISC is prepared to prove as much if necessary. However, it need not do so in this case because there is currently no live controversy between the parties relating to the hiring of any dentist. The Court should dismiss claim 1A as moot.

C. The Court Should Dismiss Claim 4 Because Such Claims Were or Could Have Been Asserted Before the Approval of ISC's Bankruptcy Plan

In Claim 4, the Group merely realleges the identical claims it made in the U. S. Bankruptcy Court. The Group had its chance to prove its claims in that forum and failed to do so. It may not assert them again here.

Upon confirmation, ISC's Bankruptcy Plan or any other Chapter 11 plan has the effect of a final judgment and binds the prospective creditors as well as the debtor. 11 U.S.C.A. § 1141(a); Kaplan Aff. ¶ 4, Ex. 3 at 90 ("[T]he distributions and rights that are provided in the Plan shall be in complete satisfaction, discharge and release, effective as of the Effective Date, of all Claims, whether known or unknown, against liabilities of, Liens on, obligations of, rights against and Interests in the Debtors, or any of their assets or properties *** including but not limited to, Claims and Interests that arose before the Confirmation Date"); *In re Varat Enterprises, Inc.*, 81 F.3d 1310, 1315 (4th Cir. 1996) (Chapter 11 plan, once confirmed, is accorded *res judicata* effect). *Res judicata* applies not only to claims that *were* raised in bankruptcy, but also to claims that *could have been* raised in bankruptcy. *In re Chattanooga Wholesale Antiques, Inc.*, 930

F.2d 458, 463 (6th Cir. 1991); *Crown v. Klein Bros.*, 121 Idaho 942, 829 P.2d 532, 536-37 (Ct. App. 1991).

The Group has attempted to circumvent *res judicata* by alleging that it is seeking only damages for alleged breaches since October 4, 2003, after the confirmation of the Plan. (Complaint ¶ 34.) This does not solve its *res judicata* problem, however, because the fact remains that the Group not only could have raised its claim in U. S. Bankruptcy Court, but actually did so. In the Objection, the Group specifically asserted claims relating to the alleged failure to provide equipment (claim 4H) and the alleged failure to pay the Group's obligations (claim 4C). (Kaplan Aff. ¶ 5, Ex. 4.) As for claims 4A, 4B, 4D-4G, and 4I-4L, the Group could have asserted such claims in the Objection. For this reason, *res judicata* applies.

Crown dealt with a similar issue. In *Crown*, bean growers stored beans in the debtor's warehouse. The debtor sold the beans to a third party but shipped only a portion. Before the debtor's bankruptcy, the growers sued the debtor and the third party, claiming that the debtor had improperly converted the beans that had already been shipped and that the third party had no interest in the beans still in storage. During the lawsuit, the debtor filed for bankruptcy. The growers initiated an adversary proceeding in bankruptcy that sought the same relief as the civil action. Approximately a month after the bankruptcy court confirmed a plan, the growers amended their complaint in the civil action to allege that they had an ownership interest in the shipped beans (as opposed to the conversion claim). 829 P.2d at 535. The debtor and the third party moved for summary judgment on the basis of *res judicata*. The court agreed: "[A] valid and final judgment rendered in an action extinguishes all claims arising out of the same transaction or series of transactions out of which the cause of action arose." *Id.* at 536 (citing *Diamond v. Farmers Group*, 119 Idaho 146, 149-50, 804 P.2d 319 (1990)). For this reason, the

court dismissed the growers' complaint. *Id.* at 539 ("[t]he express intent of the plan was to settle all disputes related to the bankruptcy. To allow the Growers to maintain this action would directly contradict and frustrate that intent.") The court added:

> "At the time of the bankruptcy action, the Growers had full knowledge of the facts underlying their current claim to the shipped beans. Those facts are the same facts upon which their claim to the stored beans was based. *** Clearly, the Growers had the capacity to present their entire controversy before the bankruptcy court. *** Therefore, the Growers' current claim is barred by the doctrine of *res judicata* ***." 829 P.2d at 540.

Beyond the *res judicata* effect of the confirmation of ISC's Bankruptcy Plan, there is an additional reason that the Group is barred from asserting its Claim 4. In the Stipulation, it specifically withdrew its claims and objections, and acknowledged that the Management Agreement could be assumed by ISC and that no prepetition cure payments were due. (Chhina Aff. ¶ 11, Ex. G.) By stipulating that there was no default requiring a cure, the Group is barred from bringing its Claim 4 again in this Court. 11 U.S.C.A. § 1141(a).

In the alternative, even if the Court for some reason does not dismiss the Group's Claim 4, it should limit the scope of potential recovery on claim 4 to alleged damages that accrued after October 3, 2003. Such a ruling would be consistent with paragraph 34 of the Complaint, which alleges damages only "[s]ince October 4, 2003" but is inconsistent with other filings made by the Group in this Court. For example, in Plaintiff's Objection to Defendant's Motion and Application for a Temporary Restraining Order (at 9-12), the Group attempted to justify its ratification of Romriell's diversion of the U. S. mail by raising a host of issues arising before and during the bankruptcy. At a minimum, ISC is entitled to an order holding the Group to its pleading and precluding it from relying on any act or omission occurring before October 4, 2003 and seeking recovery for such acts or omissions.

The reality, however, is that the Group had its day in court—the U. S. Bankruptcy Court. Its forum-shopping notwithstanding, the Group's failure to prove its claims in that court bars the Group from raising them again.

IV. Conclusion

For the above reasons, the Court should grant summary judgment in ISC's favor.

DATED this _____ day of February, 2004.

By: Scott J. Kaplan, Pro Hac Vice

STOEL RIVES LLP
Attorneys for ISC

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **ISC'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFF'S CLAIMS** the following named person(s) on the date indicated below by

- ☒ mailing with postage prepaid
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope, addressed to said person(s) at his or her last-known address(es) indicated below.

Gary L. Cooper
Ron Kerl
James P. Price
COOPER & LARSEN
151 North Third Avenue, Suite 210
PO Box 4229
Pocatello, ID 83205-4229
Fax: (208) 235-1182
gary@cooper-larsen.com
ron@cooper-larsen.com
jim@cooper-larsen.com

Attorneys for Plaintiff/Third-Party Defendant Pocatello Dental Group, P.C.

Richard A. Hearn
Stephen J. Muhonen
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
PO Box 1391/Center Plaza
Pocatello, ID 83204-1391
Fax: (208) 232-6109
rah@racinelaw.net
sjm@racinelaw.net

Attorneys for Third-Party Defendant Dr. Larry R. Misner, Jr.

Lowell N. Hawkes
LOWELL N. HAWKES, CHARTERED
1322 East Center
Pocatello, ID 82301
Fax: (208) 235-4200
hox@nicoh.com

Attorney for Third-Party Defendants Dwight G. Romriell, Gregory Romriell, Errol Ormond and Arnold Goodliffe

Thomas J. Holmes
PO Box 967
Pocatello, ID 83204
Fax: (208) 232-5962
tholmesid@aol.com

Attorney for Third-Party Defendant Porter Sutton

DATED: February 25, 2004.

Scott J. Kaplan, Pro Hac Vice
Of Attorneys for Defendant/Third-Party Plaintiff InterDent Service Corporation